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July 14, 2017

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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Ex Parte* Submission
WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Wright Petitioners are submitting this additional Ex Parte Presentation regarding the failure of most ICS providers to submit responsive information to Section VI – Video Calling Services of the FCC Form 2301(a). The FCC Form 2301(a) and FCC Form 2301(b) were required to be filed by July 1, 2017.¹

As noted in the Wright Petitioners' July 12, 2017 Ex Parte presentation, undersigned counsel has been informed by representatives and/or attorneys for most of the ICS providers that their clients chose not to submit the Video Calling Services information because of a recent court of appeals decision.²

The Wright Petitioners' July 12th Ex Parte submission noted that the *GTL Decision* has yet to become final, and the Commission had not waived or otherwise suspended the collection of this data. Therefore, due to the ICS providers' *ultra vires* interpretation of the Commission's rules, undersigned counsel requested that the Wireline Competition Bureau issue a Public Notice requiring ICS providers to file the Video Calling Services information as soon as possible. Subsequent Commission action supports this request.

In particular, on July 13, 2017, the Commission filed a *Motion of the Respondents to Govern Further Proceedings* with the Court of Appeals of the District of Columbia.³ The *Motion* related to how the court should address the pending proceeding relating to the initial Report and Order, adopted in 2013 in the instant proceeding.

¹ *Rates for Interstate Inmate Calling Services*, Order, 32 FCC Rcd 3816 (2017).

² *Global Tel*Link v. F.C.C.*, (D.C. Cir. No. 15-1461), Slip Op., June 13, 2017 (the "*GTL Decision*")

³ *See Motion of the Respondents To Govern Further Proceedings*, USCA Case No. 13-1280, filed July 13, 2017 (the "*Motion*") (Exhibit A).

In particular, the Commission acknowledged that the *GTL Decision* was not yet final, and stated:

The deadline for petitions for rehearing in *Global Tel* is July 28, 2017. Fed. R. App. P. 40(a)(1); D.C. Cir. R. 35(a). If the Wright Petitioners file the petition they contemplate and this Court grants rehearing, it will likely take several months before the *Global Tel* litigation is resolved. Accordingly, it would be premature at this juncture for the Court to resolve how to proceed in the cases here. We ask that the Court continue these cases in abeyance until the period for seeking panel and en banc rehearing in *Global Tel* expires and any such petition for rehearing filed is decided.⁴

Thus, the Commission has acknowledged that the *GTL Decision* is not yet final, and the full effect of that decision will not take place until some undetermined date in the future.

On the other hand, no ICS provider sought a waiver of the Commission's rules to avoid filing the Video Calling information after the release of the *GTL Decision*, nor did the Commission take similar action. Therefore, the ICS providers' unauthorized and unilateral decision to give immediate effect to the *GTL Decision* was in error, and the ICS providers who did not submit the required data by July 1, 2017, are in continued violation of Section 64.6060(a)(4) of the Commission's rules.⁵

Moreover, because Section 64.6060(b) requires an officer or director to "certify that the reported information and data are accurate and complete," the ICS providers who did not submit the required data by July 1, 2017, are in continued violation of Section 64.6060(b) of the Commission's rules as well.⁶ In most cases, the ICS providers included an affirmative statement that the *GTL Decision* gave them a free pass to provide the video calling information.

⁴ *Id.*, pg. 3 ("It is the ordinary practice of this Court to withhold the issuance of the mandate in a case in which a petition for rehearing has been filed, pending the resolution of that petition (and eventual resolution of the case, if rehearing is granted). See Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1)").

⁵ See 47 C.F.R. § 64.6060(a)(4) (2017) (requiring the submission of "[m]inutes of use, per-minute rates and ancillary service charges for video visitation services.").

⁶ See 47 C.F.R. § 64.6060(b) (2017) ("An officer or director of the reporting Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.").

Finally, it is worth noting that Section 1.80 of the Commission's rules establishes a \$3,000 forfeiture for "failure to file required forms or information" and the Commission may impose the statutory maximum forfeiture for misrepresentation and/or lack of candor.⁷ A copy of this Ex Parte presentation is being provided to the Enforcement Bureau for their review as well.⁸

Therefore, in light of the Commission's acknowledgement that the *GTL Decision* was not final as of July 1, 2017, and may not be final for "several months" even if the *GTL Decision* is affirmed, and apparently because the only way the ICS providers will comply with the Commission's rules is if they are specifically directed to do so, the Wright Petitioners renew their call for the Commission to issue an order directing all ICS providers to submit the missing information as soon as possible.

Respectfully submitted,



Lee G. Petro

Counsel for the Wright Petitioners

cc (by email):

Chairman Ajit Pai

Commissioner Mignon Clyburn

Commissioner Michael O'Rielly

Brendan Carr, General Counsel

Kris Monteith, Chief, Wireline Competition Bureau

Pamela Aruluk, Chief, Pricing Competition Division, WCB

Gil Strobel, Deputy Division Chief, Pricing Competition Division, WCB

Rosemary Harold, Chief, Enforcement Bureau

Jeffrey Gee, Chief, Investigations & Hearing Division, EB

⁷ See 47 C.F.R. §1.80(b)(8) (2017).

⁸ A copy of the July 12, 2017 Ex Parte Notice is provided as Exhibit B.

EXHIBIT A

**MOTION OF THE RESPONDENTS
TO GOVERN FURTHER PROCEEDINGS**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SECURUS TECHNOLOGIES, INC., *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

Nos. 13-1280 (and
consolidated cases)

SECURUS TECHNOLOGIES, INC., *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

Nos. 16-1321 (and
consolidated cases)

**MOTION OF THE RESPONDENTS
TO GOVERN FURTHER PROCEEDINGS**

Pursuant to orders entered in the above-captioned cases, and following this Court's June 13, 2017, decision in *Global Tel*Link v. FCC*, Nos. 15-1461 et al. (decision reported at 859 F.3d 39), the respondents submit this Motion to Govern Further Proceedings in both dockets.

Beginning in 2013, the Federal Communications Commission issued a series of three rulemaking orders concerning inmate calling services. The first of those orders adopted interim rules governing interstate inmate calling services, and charges ancillary to those services.¹ Petitioners challenged that order before this Court in cases consolidated as *Securus Technologies, Inc. v. FCC*, Nos. 13-1280 et al. In 2015, the Commission adopted a more comprehensive set of rules governing both interstate and intrastate inmate calling services, as well as ancillary charges, in the order addressed by this Court in *Global Tel*.² While the *Global Tel* litigation was pending, the Commission issued a reconsideration order that modified the rules adopted in 2015.³ Petitioners challenged that order before this Court in cases consolidated as *Securus Technologies, Inc. v. FCC*, Nos. 16-1321 et al.

The issues in the three sets of inmate calling cases are interrelated. Since the release of the Court's June 13 decision, the Commission has been evaluating its impact on the cases here and considering all options for further administrative proceedings concerning inmate calling services.

We understand, however, that intervenors in support of the respondents—known in these proceedings as the “Wright Petitioners”—currently contemplate filing a petition for rehearing in *Global Tel*.

¹ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013).

² *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015).

³ *Rates for Interstate Inmate Calling Services*, 31 FCC Rcd 9300 (2016).

The deadline for petitions for rehearing in *Global Tel* is July 28, 2017. Fed. R. App. P. 40(a)(1); D.C. Cir. R. 35(a). If the Wright Petitioners file the petition they contemplate and this Court grants rehearing, it will likely take several months before the *Global Tel* litigation is resolved.⁴ Accordingly, it would be premature at this juncture for the Court to resolve how to proceed in the cases here. We ask that the Court continue these cases in abeyance until the period for seeking panel and en banc rehearing in *Global Tel* expires and any such petition for rehearing filed is decided.

⁴ It is the ordinary practice of this Court to withhold the issuance of the mandate in a case in which a petition for rehearing has been filed, pending the resolution of that petition (and eventual resolution of the case, if rehearing is granted). *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Respectfully submitted,

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Attorney General

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Department of Justice
Washington, DC 20530

Brendan Carr
General Counsel

David M. Gossett
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Jacob M. Lewis
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/s/ Sarah E. Citrin
Sarah E. Citrin
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July 13, 2017

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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/s/ Sarah E. Citrin

Sarah E. Citrin

Counsel for Respondents

CERTIFICATE OF FILING AND SERVICE

I, Sarah E. Citrin, hereby certify that on July 13, 2017, I electronically filed the foregoing Motion of the Respondents to Govern Further Proceedings with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Sarah E. Citrin

Sarah E. Citrin

Counsel for Respondents

EXHIBIT B

JULY 12, 2017 EX PARTE PRESENTATION

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July 13, 2017

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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Ex Parte* Submission
WC Docket No. 12-375

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Wright Petitioners submit this notice of an *ex parte* telephonic presentation made to Pamela Arluk, Chief, and Gil Strobel, Deputy Division Chief, of the Pricing Policy Division of the Wireless Competition Bureau, on July 11, 2017.

Undersigned counsel for the Wright Petitioners raised concerns that certain ICS providers failed to provide the required information requested in Section VI – Video Calling Services of the FCC Form 2301(a). Those forms were required to be filed by July 1, 2017.¹ Undersigned counsel noted that several of the ICS providers who failed to submit the forms had referenced a recent court of appeals decision² as the basis for not submitting the required information in their public, redacted submissions.³ Other providers left the entire section blank in their public, redacted submissions, and their representatives subsequently informed undersigned counsel they would not be providing that information due to the *GTL Decision*. Notably, no ICS provider that failed to submit the required video calling services information cited a public notice or other Commission order permitting such action.

Undersigned counsel noted in the conversation that Rule 40 of the Federal Rules of Appellate Procedure provides forty-five (45) days from the issuance of the *GTL Decision* for a petition for panel rehearing to be submitted. Only after that 45-day period expires, with no petition for

¹ *Rates for Interstate Inmate Calling Services*, Order, 32 FCC Rcd 3816 (2017).

² *Global Tel*Link v. F.C.C.*, (D.C. Cir. No. 15-1461), Slip Op., June 13, 2017 (the "*GTL Decision*")

³ See, e.g., Annual Report Form, FCC Form 2301(a) ([CenturyLink](#) – "Video Calling not reported due to June 13, 2017 DC Circuit Court of Appeals Ruling.") ([Pay Tel Communications](#) – "This requirement vacated by the DC Circuit in *Global Tel*Link, et al. v. FCC.*")

rehearing being filed, will the court's mandate associated with the *GTL Decision* be issued.⁴ Specifically, Rule 41(b) of the Federal Rules of Appellate Procedure states that "[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires."⁵ Equally as important as the timing of the issuance of the mandate is the fact that a "timely filing of a petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate, stays the mandate until disposition of the petition or motion."⁶

Thus, undersigned counsel commented that the ICS providers' reliance on a decision that has yet to become final, and for which the issuance of the mandate may be delayed should parties such as the Wright Petitioners seek rehearing, was misplaced. Until the *GTL Decision* becomes final, undersigned counsel noted, the requirement to comply with the Commission's rules is required, including the requirement to submit a complete FCC Form 2301(a) prior to the July 1st deadline.

Because certain ICS providers failed to comply with the Commission's rules, and failed to cite any Commission public notice or order in support their otherwise *ultra vires* interpretation of the Commission's rules, undersigned counsel requested that the Wireline Competition Bureau issue a Public Notice requiring ICS providers to file the Video Calling Services information as soon as possible.

Respectfully submitted,



Lee G. Petro

Counsel for the Wright Petitioners

cc (by email):

Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Brendan Carr, General Counsel
Kris Monteith, Chief, Wireline Competition Bureau
Pamela Aruluk, Chief, Pricing Competition Division, WCB
Gil Strobel, Deputy Division Chief, Pricing Competition Division, WCB

⁴ F.R. App. P. 40.

⁵ F.R. App. P. 41.

⁶ F.R. App. P. 41(d).